

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL HANLEY and U.S. POSTAL SERVICE,  
POST OFFICE, City of Industry, CA

*Docket No. 01-403; Submitted on the Record;  
Issued March 7, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits under 5 U.S.C. § 8148.

On June 24, 1982 appellant, then a 36-year-old letter carrier filed a traumatic injury claim when he fell into a hole and injured his left knee and left shoulder in the course of his federal employment. The Office accepted the claim for internal derangement of the left knee, traumatic arthritis of the left knee and tendinitis of the left shoulder.<sup>1</sup> The Office placed appellant on the periodic rolls and paid appropriate compensation benefits.

By decision dated April 29, 1998, the Office advised appellant that his compensation benefits were being terminated as he did not provide a definitive answer on his CA-1032 form regarding whether he had earnings from employment. Appellant was advised that if he later provided the requested information, his benefits would be reinstated.

By letter dated July 27, 1998, appellant requested that his compensation benefits stop effective April 26, 1998.<sup>2</sup>

By letter dated November 10, 1998, appellant was advised by the United States Attorney's Office of a proposed plea agreement, that would resolve all potential criminal charges relating to his failure to disclose participation in a cellular telephone sales and services business. He would agree to plead guilty to one count charging a misdemeanor of making a false statement

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<sup>1</sup> The record also reflects that appellant stated that he had an injury on June 2, 1978 injuring his tailbone and left buttock at work. Appellant stated that he also pulled his back at work. The file does not contain any record of those claims. Appellant also stated that he had a 25 percent hearing loss and injured his left knee in 1980 while playing volleyball.

<sup>2</sup> The record reflects that appellant elected to receive civil service retirement benefits, effective April 26 1998, in lieu of compensation benefits.

on a CA-1032 form in violation of 18 U.S.C. § 1920. Appellant was advised that he would pay restitution in the amount of \$4,632.97. Additionally, appellant was advised that he would be prohibited from receiving any further monetary (nonmedical) benefits under the Federal Employees' Compensation Act and could make no claim for benefits, other than medical, otherwise available to him through the Office of Personnel Management (OPM) prior to July 28, 1998. The plea agreement was signed on November 23, 1998.

By letter dated November 23, 1998, appellant requested that his compensation benefits stop effective July 28, 1998.

Appellant pled guilty to the one-count information and was sentenced on January 20, 1999, in a decision rendered on January 21, 1999, for providing a false statement to obtain federal employees compensation on a CA-1032 form in violation of 18 U.S.C. § 1920.

By decision dated November 15, 1999, the Office terminated appellant's compensation benefits because he pled guilty to defrauding the FECA program. Appellant was advised that anyone convicted of a violation relating to fraud in the receipt of benefits under the Act would be required to forfeit entitlement to such benefits. The Office would not pay medical benefits for further treatment and noted wage-loss benefits were terminated effective April 25, 1998, the effective date of his election of retirement benefits.

By letter dated December 15, 1999, appellant through his representative requested an oral hearing, which was held on August 24, 2000. Appellant underwent a total knee arthroplasty on January 5, 2000 and requested payment of medical expenses.

By decision dated September 25, 2000, an Office hearing representative found that entitlement to compensation ceased on April 25, 1998 and that appellant was not entitled to medical benefits, despite language contained in his plea agreement. He affirmed the November 24, 1999 decision.

The Board finds that the Office properly terminated appellant's compensation benefits under 5 U.S.C. § 8148.

Pursuant to section 8148, a federal or state criminal conviction relating to fraud in the application for or receipt of any benefit under Act shall result in the forfeiture of compensation. The Act provides:

“(a) Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for [or] receipt of any benefit under [the Act], shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under [the Act] for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.”

Section 10.17 of the Office's implementing federal regulation provides:

“When a beneficiary either pleads guilty to or is found guilty on either Federal or State criminal charges of defrauding the Federal government in connection with a claim for benefits, the beneficiary’s entitlement to any further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any injury occurring on or before the date of such guilty plea or verdict. Termination of entitlement under this section is not affected by any subsequent change in or recurrence of the beneficiary’s medical condition.”<sup>3</sup>

Under section 8148(a), a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920 will have his compensation forfeited. The claimant is thereafter permanently barred from receiving any compensation under the Act. Since appellant was convicted of an offense under section 1920, the Office properly terminated his compensation benefits under the forfeiture provision.

Appellant contends that he remains entitled to medical benefits as he made the plea agreement on the condition that his medical benefits would continue. The agreement stated that appellant would be prohibited from receiving any further monetary (nonmedical) benefits under the FECA and OWCP programs and that he would make no claim for benefits other than medical, “otherwise available to him through the OPM prior to July 21, 1998.” The Board notes that the forfeiture penalty enacted under section 8148(a) requires a permanent ban on all compensation benefits under the Act for anyone convicted of fraudulently receiving benefits.<sup>4</sup> In this case, appellant was convicted of fraud in receiving compensation benefits, the Office properly imposed the penalty provisions of section 8148(a) to this case. There is no exception for excluding the forfeiture to medical benefits as they constitute compensation benefits under the Act.<sup>5</sup>

The Board notes, however, that the Office improperly set the effective date of termination as April 25, 1998. Section 8148 specifically states that the forfeiture shall be effective as of the date of the conviction. The record shows that while appellant signed the proposed plea agreement on November 23, 1998 the plea was not accepted by the Judge until January 20, 1999 and signed on January 21, 1999, when guilt was adjudicated. The date of the conviction is not the date appellant entered his proposed plea agreement but the date the plea was accepted and guilt adjudicated. The effective date of forfeiture of compensation is January 21, 1999.

The September 19, 2000 decision of the Office of Workers’ Compensation Programs is hereby affirmed, as modified.

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<sup>3</sup> 20 C.F.R. § 10.17.

<sup>4</sup> See *Maurice G. Hardin*, 52 ECAB \_\_\_\_ (Docket No. 00-882, issued May 23, 2001).

<sup>5</sup> The terms of the Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits under any terms other than those specified in the statute. See *Edward Schoening*, 48 ECAB 326 (1997); *Alonzo R. Witherspoon*, 43 ECAB 1120 (1992); see also 5 U.S.C. § 8101(12) and *Gary L. Whitmore*, 43 ECAB 441 (compensation includes payments for medical expenses).

Dated, Washington, DC  
March 7, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member